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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,446

05/10/2005

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PU020452

4710

24498

7590

02/18/2009

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EXAMINER

LEE, PHILIP C

ART UNIT

PAPER NUMBER

2452

MAIL DATE

DELIVERY MODE

02/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/534,446	Applicant(s) PUGEL ET AL.	
	Examiner PHILIP C. LEE	Art Unit 2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/5/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendment and remarks filed on December 15, 2008.
2. Claims 1-20 are presented for examination.
3. Foreign Patent Documents, AH and AI of the information disclosure statement filed 2/5/09 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections – 35 USC 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 1 is rejected under 35 U.S.C. 101 because “An alert receiver” comprising a discriminator and a warning device (i.e., software) (see page 4, lines 23-25 of the specification and 32, 30 of fig. 2) does not include any functional structure of a machine. A machine

comprising a discriminator and a warning device (i.e., software) is considered as program per se, which is not one of the categories of statutory subject matter.

6. Claim 15 is rejected under 35 U.S.C. 101 because “An alert system” (i.e., machine) comprising a receiver, a discriminator and a warning device (i.e., software) (see page 4, lines 23-25 of the specification and 32, 30 of fig. 2) does not include any functional structure of a machine. A machine comprising a receiver, a discriminator and a warning device (i.e., software) is considered as program per se, which is not one of the categories of statutory subject matter.

Claim Rejections – 35 USC 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

8. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1-10 and 14-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Deeds, U.S. Patent 6,710,715 (hereinafter Deeds).

10. As per claim 1, Deeds teaches the invention as claimed comprising:

a discriminator which receives encoded signals from a network (col. 11, lines 24-26) (inherent in a broadcast network), the encoded signals for reporting an event (reporting weather event) from an information source (e.g., NWS) coupled to the network (col. 13, lines 31-33, 38-40), wherein the discriminator compares the encoded signals, which include codes designating geographic locations (col. 4, lines 28-30)(geographical area header code block of SAME message), to codes associated with specific localities to determine whether to alert a user (col. 13, lines 42-49); and

a warning device responsive to a result of comparing the encoded signals to the codes associated with specific localities (col. 13, lines 45-49; col. 14, lines 1-4).

11. As per claim 15, Deeds teaches the invention as claimed comprising: a receiver located at a user's location (304, fig. 3), the user's location having a code designation associated therewith (col. 10, lines 58-61); the receiver being coupled to a network (inherently coupled to a broadcast network in order to receive broadcast from NWS) from which a plurality of encoded reports are provided to the receiver (col. 11, lines 24-26; col. 13, lines 31-40); a discriminator (214,

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314)which deciphers the encoded reports to determine reports corresponding to the code designation associated with the user's location (col. 13, lines 35-49); and a warning device (220, 232) located at the user's location to inform a user of the reports corresponding to the code designation associated with the user's location (col. 13, lines 45-49; col. 14, lines 1-4).

12. As per claim 2, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the warning device includes an audible alarm (col. 14, lines 1-4).

13. As per claim 3, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the warning device includes a visual alarm (col. 13, lines 48-49).

14. As per claim 4, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the codes associated with specific localities include codes designating a user's geographic location (col. 10, lines 59-63).

15. As per claim 5, Deeds teaches the invention as claimed in claim 4 above. Deeds further teach wherein the codes designating geographic locations include Federal Information Processing System (FIPS) codes (col. 13, lines 44-45).

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16. As per claim 6, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the encoded signals include Specific Area Message Encoding (SAME) (col. 13, lines 35-37).

17. As per claim 7, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach comprising a display, which renders textual messages from the encoded signals when a comparison criterion is met (col. 13, lines 45-49).

18. As per claim 8, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the event is associated with the codes designating geographic locations and the codes associated with specific localities designate an aspect of the alert receiver such that when one or more event codes match one or more of the codes associated with specific localities, the warning device responds (col. 4, lines 28-30; col. 13, lines 42-49).

19. As per claim 9, Deeds teaches the invention as claimed in claim 8 above. Deeds further teach wherein the aspect of the alert receiver includes a code designating a location of the alert receiver(col. 10, lines 58-61).

20. As per claim 10, Deeds teaches the invention as claimed in claim 8 above. Deeds further teach wherein the aspect of the alert receiver includes the codes designating geographic locations (col. 10, lines 58-61).

21. As per claim 14, Deeds teaches the invention as claimed in claim 1 above. Deeds further teach wherein the encoded signals are included in a data packet inserted into a data stream, wherein the data packet is identifiable as an alert message (col. 13, lines 35-40).
22. As per claim 16, the claim is rejected for the same reason as claims 2 and 3 above.
23. As per claim 17, the claim is rejected for the same reason as claim 1 above.
24. As per claim 18, the claim is rejected for the same reason as claim 5 above.
25. As per claim 19, the claim is rejected for the same reason as claim 6 above.
26. As per claim 20, Deeds teaches the invention as claimed receiving an alert message concerning an emergency situation affecting a user location(abstract), the user location having a code designation associated therewith comprising the steps of: receiving the alert message comporting to a data format (col. 13, lines 31-40); comparing codes that designate geographic locations to the code designation associated with a user location, the codes that designate geographic locations being in the alert message (col. 13, lines 38-49); deciphering the alert message into a report with a corresponding code designation (col. 13, lines 38-45); and rendering an alert upon a match of the code designation associated with the user location to the corresponding code designation of the report (col. 13, lines 45-49).

Claim Rejections – 35 USC 103

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deeds.

29. As per claim 12, Deeds teaches the invention as claimed in claim 1 above. Deeds does not specifically teach that the receiver is always on. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to allow the receiver to be always on for being responsive to the encoded signals because by doing so it would be able to receive unexpected warning signal that can occur at any time.

30. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deeds in view of Lock et al, U.S. Patent Application Publication 2003/0121036 (hereinafter Lock).

31. As per claim 11, Deeds teaches the invention as claimed in claim 1 above. Deeds does not teach a head end station through a cable network. Lock teaches a similar alert receiver, wherein the alert receiver is coupled to a head end station through a cable network ([0005]).

32. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teaching of Deeds and Lock because Lock's teaching would allow alert messages to be distributed to users in Deeds's system via CATV distribution cables network.

33. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deeds in view of Baron et al, U.S. Patent 5,940,776 (hereinafter Baron).

34. As per claim 13, Deeds teaches the invention as claimed in claim 1 above. Deeds does not teach vertical blanking interval of received television signal. Baron teaches a similar receiver, wherein the encoded signals include characters inserted into a vertical blanking interval (VBI) of a received television signal (col. 2, line 66-col. 3, line 9).

35. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teaching of Deeds and Baron because Baron's teaching would allow alert messages such as National Weather Service (NWS) messages to be inserted in a television signal for transmission to a remote user in Deeds's system.

36. Applicant's arguments with respect to claims 1-20 have been considered but they are not persuasive.

37. In the remarks, applicant argued that:

- (1) The discriminator and warning device are physical components of a machine, thus claims 1 and 15 are directed to statutory subject matter.
- (2) Deeds fails to teach a discriminator that “compares the encoded signals, which include codes designating geographic locations, to codes associated with specific localities to determine whether to alert a user.
- (3) Deeds fails to teach a warning device located at the user’s location.

38. In response to point (1), on page 6, lines 13-16 of the remarks filed on 12/15/2008, applicant states: "The physical layout of the components of the alert is indicated in FIG. 2. See Specification, page 6, lines 23-24, FIG. 2. The discriminator 32 is one physical component and the warning device 30 is another." It is noted that a machine does not inherently comprise hardware structure. As disclosed in page 4, lines 23-25 of the specification, the elements in the FIGs can be software. This means the elements (e.g., the discriminator and warning device) can be software. Thus, a machine comprising a discriminator and a warning device (i.e., software) is considered as program per se, which is not one of the categories of statutory subject matter.

39. In response to point (2), Deeds teaches comparing the geographical information in the received “SAME message” (i.e., encoded signal which include codes designating geographic locations) with FIPS codes associated with the user’s geographical location (i.e., codes associated with specific localities) to determine whether to send and to display (i.e., alert) the alert to a user (col. 13, lines 42-49).

40. In response to point (3), Deeds teaches a local user interface 224 and a remote user interface 220 for displaying the alert information throughout the user's premise (col. 13, lines 45-49). This means the user interfaces 224 and 220 are the warning devices located at the user's location (i.e., user's premise). Furthermore, Deeds teaches the local user interface 224 and remote user interface 220 provide alerts to user (col. 10, lines 19-22; col. 12, lines 12-14). This means the local and remoter user interfaces must be located at the user's location in order to alert the user.

CONCLUSION

41. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (571)272-3967. The examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other Friday. If attempts to reach the examiner by

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telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571) 272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip C Lee/

Primary Examiner, Art Unit 2452